IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

KALU RAM VS. GORAKHA RAM

S.B.CIVIL MISC. APPEAL NO.581/1994

Against the award dated 19.04.1994 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.188/1988.

Date of Judgment : 28.08.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Heera Singh for Mr.Pradeep Shah for the petitioner.
Mr.M.C.Bishnoi for the respondent.
Mr.B.S.Rajpurohit for respondent No.3.

BY THE COURT:

This claimant's appeal is directed against the award dated 19.04.1994 made by the Motor Accidents Claims Tribunal, Balotra in Claim Case No.188/1988 rejecting the claim for compensation after arriving at the finding that the accident in question, involving a jeep and a truck, occurred for rash and negligent driving of the jeep by the claimant himself.

Brief facts relevant for determination of the questions involved in this appeal are that the claimant Kalu Ram filed the claim application aforesaid claiming compensation for the

bodily injuries sustained by him and so also of property damage with the submissions that on 14.05.1998 at about 10.00 p.m. he was going towards Balotra from Village Muthali in his jeep bearing registration No. RNM 4919; when he reached near Asotra bifurcation, he saw the offending truck coming on at a brisk speed; he pushed his jeep towards left to avoid collision; but the non-applicant No.1 while driving the truck negligently hit the jeep causing several injuries to the applicant including facture on his left leg and damage to the jeep. Narrating the incident and lodging of the First Information Report at Police Station, Balotra the claimant claimed compensation in the sum of Rs.50,000/- for the damage caused to his jeep; Rs.50,000/- for the injuries suffered by him and the loss of income; and Rs.5,000/- towards treatment expenditure. The claim was made against the driver, owner and the insurer of the offending truck bearing registration No. GRW 1819.

The owner and driver of the truck involved in the accident remained ex parte and the insurer non-applicant No.3 contested the claim. While denying the claim averments the insurer submitted that its Sardarpura Branch did not insure the vehicle and, instead, its Mehsana office issued the insurance policy. The non-applicant also contended that the accident was caused by the mistake of the claimant himself and, therefore, he was not entitled for any compensation. It was

also alleged that the vehicle was being driven in violation of the policy conditions and the driver of the vehicle was not holding valid driving licence. On the pleadings of the parties the Tribunal framed the following issues for determination of the questions involved in the case.

> 1- आया दिनांक: 14.5.88 को शाम 10 बजे बालोतरा आसोतरा फांटा के पास बाड़मेर सड़क पर बालोतरा में विप्रार्थी सं. 1 गोरखाराम द्वारा ट्रक जी.आर.डब्लू. 1819 को तेज व लापरवाही से चलाते हुए प्रार्थी की जीप आर.एन.एम. 4919 के टक्कर मारी जिससे जीप क्षतिग्रस्त हुई व प्रार्थी घायल हुआ ?
>
> .....प्रार्थी
>
> 2- आया प्रार्थी विप्रार्थीगण से क्लेम हर्जाने की राशि पानें का अधिकारी है, यदि है तो किस कदर व किससे ?
>
> .....प्रार्थी
>
> 3- आया विप्रार्थी सं. 1 के पास वक्त दुर्घटना वैध ड्राईविंग लाइसेंस था ?
>
> ...प्रार्थी
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> 4- आया प्रार्थी स्वयं अपनी जीप लापरवाही से चला रहा था,जिससे कोन्ट्रिब्यूटरी नेग्लीजेंस के तहत क्लेम को पानें का अधिकारी नहीं है।
>
> ....विप्रार्थी
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> 5- दादरसी ?

The claimant, apart from submission of documentary evidence particularly in relation to the criminal case registered in respect of the accident and of his treatment expenditure, examined himself as AW-1 and one Jalam Singh alleged to be another occupant of the jeep at the time of the accident as AW-2. No evidence was led on behalf of the non-applicants.

After hearing of the parties, the learned Judge of the Tribunal took up for consideration issues Nos.1 and 4 together

and particularly with reference to the site inspection memo [Ex.4] observed that at the place of accident the jeep had nearly 10 ft. space available on its left hand side; and by taking reasonable care and caution the jeep driver could have pushed his vehicle to its left and could have avoided the accident. Learned Judge also referred to mechanical inspection report of the two vehicles involved in the accident and observed that while the truck got damaged on its right hand side, the entire front of the jeep got damaged that was also indicative of the fact that the jeep did not keep its lane and hit the truck from the front. The assertion on the part of the claimant having pushed his jeep down the road towards the left was rejected and so also his suggestion that he could not make it sure if the truck would take the road towards Asotra or would come straight with reference to the fact that the bifurcation toward Asotra was more than 200 ft. away, behind the truck. The learned Judge found that the accident did not occur for the negligence of the truck driver.

The learned Judge decided issue No.3 also against the claimant with the observations that he had failed to produce the driving licence of the non-applicant No.1 despite having been afforded opportunity to do so. The learned Judge though found the accident not to have occurred for any negligence of the truck driver, yet proceeded to quantify the loss in Issue No.2 and found the claimant to have spent Rs.945/- on the

medicines; found him entitled for Rs.5000/- for loss of income during treatment period and further Rs.10,000/- towards the damage caused to the vehicle; and found the claimant entitled for consolidated interest at Rs.2,000/- with the observations that he was responsible for delay in disposal of the claim application. However, in view of the finding on other relevant issues the claim was ordered to be rejected. Hence this appeal.

Learned counsel Mr. Heera Singh appearing for the appellant has strenuously contended that the Tribunal has seriously erred in not considering the rash and negligent driving of the truck that hit the jeep so forcefully that the jeep revolved and turned around just opposite to the direction it was steering to. Learned counsel further submitted that the accident occurred nearly in the middle of the road with head on collision of the two vehicle and in the overall circumstances the Tribunal has been in error in fastening the entire liability towards accident on the jeep driver-claimant alone. Learned counsel referred to the statements of AW-1 and AW-2 and submitted that the claimant has clearly established that the accident occurred for the negligence of the truck driver and there being no rebuttal on the part of the non-applicants, there was no reason for not believing the statement of the claimant and his witnesses.

Per contra, learned counsel Mr. B.S.Rajpurohit appearing for the non-applicant No.3 insurer has strenuously contended that the claimant is clearly proved untruthful in his assertions when it has been found that he did not push his vehicle towards the left hand side and down the road; and on the other hand, it has been found that nearly 10 ft. space on the road was available on the left of the jeep at the point of impact that clearly shows that the accident occurred solely for the negligence of the jeep driver who intruded into the lane of the truck. Learned counsel further referred to the mechanical inspection report of the two vehicles and pointed out that the truck had suffered damage only on its right hand side whereas the jeep had suffered damage on its entire front that shows clearly that the jeep was at fault that intruded and rammed into the truck. The suggestion of the claimant's witness Jalam Singh of the truck having not put its head-lights on has also been refuted with the submissions that no such averments have been taken in the claim petition and the mechanical inspection report shows that the head-lights of the truck were functional. In relation to the probative value of the police reports learned counsel has submitted that the strict rules of the evidence do not apply to the Motor Accident Claims cases and with reference to the decision of this Court in RSRTC Vs. Nand Kishore & Ors.: 2002 ACJ 1564 submitted that the investigation documents like inspection map and site

inspection memo prepared by the police in discharge of its official duties are admissible in evidence without formal proof. Learned counsel submitted that the Tribunal has not committed any error in relying on the site inspection memo [Ex.4] that effectively demolishes the case sought to be set up by the claimant. Learned counsel further submited that the quantum of compensation claimed by the appellant also remains exorbitant and baseless; no proof of expenditure on the repairs of the jeep has been adduced; and no physical disability has been proved. Learned counsel Mr. M.C.Bishnoi appearing for the respondent No.1, has duly supported the submissions made by Mr. Rajpurohit.

Having heard learned counsel for the parties and having perused the material placed on record this Court is of opinion that the impugned award rejecting the claim application of the claimant appellant altogether cannot be sustained.

Learned Judge of the Tribunal has proceeded to hold the jeep driver responsible towards the accident only on the considerations that in the site inspection memo [Ex.4] it has been shown that there was 10 ft wide gap available on the left hand side of the jeep and this fact alone has been taken sufficient to believe that the jeep has intruded inside the lane of the truck and that the accident was the sole responsibility of the jeep driver. The learned Judge has further found the

claimant incorrect in his assertion of having pushed his vehicle down the road and has, therefore, assumed that there was no responsibility of the truck driver. Another circumstance weighing with the learned Judge of the Tribunal had been of finding the entire front of the jeep being damaged whereas the truck getting damaged only on its right hand side. However, while considering the evidence other significant features available from the site inspection report [Ex.4] have altogether been ignored. A close look at the site inspection report makes it evident that the truck in question was being driving at a very high speed and in an uncontrolled manner. The jeep has been shown dragged or pushed behind for a sufficiently long distance from the point of impact; and the impact itself had been so forceful that the jeep revolved towards its opposite direction. Even if a part of such displacement of the jeep be attributed to the forces acting upon the vehicle due to the impact, the most significant feature available in the site inspection report is that the truck in question came to halt more than 200 ft. from the point of impact on its right hand side. Such position of the truck has been distinctly shown in site plan at point No. 3 with the following noting,-

> "(3) स्थान सड़क के दाहिनी तरफ पश्चिम की तरफ जीप से करीब 200 फीट पर रोड से नीचे रेत में ट्रक दुर्घटनाग्रस्त , जिसके अगले भाग में दाहिनी तरफ बती के पास मोच आई हुई है व अगली नम्बर प्लेट

मुड कर अन्दर गई है जिसके नम्बर GRW 1819 है जो खाली ट्रक है।"

Had it been a case of truck being driven in controlled manner on its side, even if the jeep has intruded in its lane, the truck would have been brought to halt immediately at the point of impact or very near to that. The mechanical inspection report of the truck (Ex.5) reports about its steering as well as its foot-breaks and so also the hand break to be in working condition. Therefore, it is apparent that none of the systems of the truck got any damage from out of impact. In the scenario, if the truck were being driven in a controlled manner it would have been brought to a halt immediately on the impact. The very fact that the truck travelled to a distance of more than 200 ft. and then also came to a halt only on its wrong side is indicative of the fact that there was an obvious omission of taking reasonable care and caution by the truck driver.

It is true that the assertion as made by the claimant of having pushed his vehicle down the road is not correct; but the accident occurred nearly in the middle of the road; and it is not correct to assume that the jeep severed towards its right hand side and intruded inside the lane of the truck. Of course the jeep has been shown lying on its right hand side but in the same site plan the point of impact has been shown about 14-

15 ft. before the location of the jeep towards the side the truck was coming from where the road also got damaged as shown at point No.2 in the inspection memo. Such point of impact is very nearly in the middle of the road.

When the accident with head-on collision had occurred nearly in the middle of the road, normally the presumption is of the fault and mistake on the part of both the on-coming vehicles; and in the present case also there appears no reason not to believe the accident to have occurred for the fault of both the drivers. Coupled with the evidence available on record is a significant omission on the part of the non-applicants to lead any evidence and particularly of not producing the driver of the offending truck in evidence for which an adverse inference is definitely required to be drawn against the non-applicants. The cumulative effect of the evidence as made available on record and as omitted to be produced remains that the finding on the total negligence of the jeep driver cannot be sustained and instead, the accident is held to have occurred for the contributory negligence of both, the truck driver and the jeep driver. Therefore, the truck driver stands 50% in liability towards the accident.

So far the finding on issue No. 3 is concerned, the same cannot be sustained for the simple reason that the insurer has not led evidence and has failed to show violation of policy condition by the insured.

In relation to the quantum for compensation, there appears no reason to take a different view in relation to treatment expenditure of Rs.945/- calculated by the Tribunal. The case of permanent disability is not established on record, however, in view of the injuries sustained by the claimant of facture of tibia and fibula left side and his having remained hospitalised from 14.05.1988 to 25.05.1988 [vide Ex.38], it appears appropriate to allow an amount of Rs.3,000/- towards the injuries and the pains and sufferings. The claimant has been shown working as a contractor and could not attend on to the work for about 2-3- months. Taking his earning at about Rs.3,000/- per month it appears proper to allow him the loss of income for two months in the sum of Rs.6,000/-. Having regard to the nature of the injuries sustained by the claimant, a further provision in the sum of Rs.2,000/- deserve to be made towards loss on dietary expenditure and attendants. The Tribunal has assessed an amount of Rs.10,000/- towards the property damage of the loss caused to the jeep. However, no bills of repairs having been produced, this Court is of opinion that the claimant may be allowed only Rs.5,000/- on this count. The loss, therefore, in all stands at Rs.16,945/-, rounded up to Rs.17,000/-. In view of his contributory negligence, the claimant is entitled for 50% of the amount of loss i.e., Rs.8,500/-. The Tribunal has proceeded to award consolidated amount of Rs.2,000/- as interest, however, in the claim case

made in the Year 1988 this Court is of the opinion that the interest of justice shall meet if the claimant is allowed interest @ 9% per annum on the award amount from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award dated 19.04.1994 is set aside. The claimant appellant is awarded an amount of Rs.8,500/- as compensation with interest @ 9% per annum from the date of filing of the claim application. The amount payable shall be deposited by the insurer non-applicant No. 3 within 30 days from today with the Tribunal and the amount so deposited be paid cash to the claimant appellant. In the circumstance of the case the parties shall bear their own costs.

[DINESH MAHESHWARI], J.

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